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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 DONALD SCHWEINSBURG,
13 individually, and on behalf of all others
similarly situated,

14 Plaintiffs,

15 v.

16 PARAGON SYSTEMS, INC., dba
17 PARASYS, INC., and DOES 1 through
100, inclusive,,
18

19 Defendants.
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Case No.

CV09-8139 PSG (JCx)

**DEFENDANT PARAGON
SYSTEMS, INC.'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT PURSUANT TO
28 U.S.C. SECTIONS 1332 AND 1441**

[28 U.S.C. §§ 1332 and 1441]

Trial Date: None set.

Complaint Filed: September 28, 2009
(Los Angeles Superior Court)

1 TO THE CLERK OF THE FEDERAL DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA, PLEASE TAKE NOTICE that Defendant
3 Paragon Systems, Inc. ("Defendant"), contemporaneously with the filing of this
4 Notice, hereby effects removal of the below referenced action from the Superior Court
5 in the State of California for the County of Los Angeles to the United States District
6 Court for the Central District of California. This removal is based on 28 U.S.C.
7 sections 1332(d) (the Class Action Fairness Act), 1441(b) and 1332(a)(2) (Diversity
8 of Citizenship), specifically, on the following grounds:

9 I.

10 **JURISDICTION AND VENUE ARE PROPER.**

11 **A. Jurisdiction Under The Class Action Fairness Act**

12 1. On February 18, 2005, the Class Action Fairness Act of 2005 ("CAFA")
13 was enacted. In relevant part, CAFA grants federal district courts original jurisdiction
14 over civil class action lawsuits filed under federal or state law in which any member
15 of a class of plaintiffs is a citizen of a state different from any defendant, and where
16 the matter in controversy exceeds \$5,000,000, exclusive of interest and costs. CAFA
17 authorizes removal of such actions in accordance with 28 U.S.C. section 1446. As set
18 forth below, this case meets all of CAFA's requirements for removal, and is timely
19 and properly removed by the filing of this Notice.

20 2. This Court has jurisdiction over this case under the Class Action Fairness
21 Act, 28 U.S.C. section 1332(d), and this case may be removed pursuant to the
22 provisions of 28 U.S.C. section 1441(a), in that it is a civil class action wherein: 1) the
23 proposed class contains at least 100 members; 2) the primary defendants are not states,
24 state officials or other governmental entities; 3) the total amount in controversy for all
25 class members exceeds \$5 million and; 4) there is diversity between at least one class
26 member and one defendant.

27 3. CAFA's minimal diversity requirement is satisfied when at least one
28 plaintiff is a citizen of a state in which none of the defendants are citizens, when one

1 plaintiff is a citizen of a foreign state and one defendant is a U.S. citizen, or when one
 2 plaintiff is a U.S. citizen and one defendant is a citizen of a foreign state.

3 4. Here, the proposed class contains at least 100 members, the total amount
 4 in controversy exceeds \$5 million, and there is diversity between at least one class
 5 member and one defendant.

6 **B. Diversity of Citizenship Jurisdiction**

7 5. This Court also has original jurisdiction under 28 U.S.C. section
 8 1332(a)(2), and this case may be removed pursuant to the provisions of 28 U.S.C.
 9 section 1441(a), in that it is a civil action wherein the amount in controversy for the
 10 named plaintiff exceeds the sum of seventy five thousand dollars (\$75,000), exclusive
 11 of interest and costs, and it is between "citizens of a State and citizens or subjects of a
 12 foreign state." As set forth below, this case also meets all of Section 1332's
 13 requirements for removal and is timely and properly removed by the filing of this
 14 Notice.

15 **II. STATUS OF THE PLEADINGS.**

16 6. This lawsuit arises out of Plaintiff Donald Schweinsburg's ("Plaintiff")
 17 employment with Defendant. On September 28, 2009, Plaintiff filed a Complaint in
 18 the Superior Court of the State of California, County of Los Angeles, entitled
 19 DONALD SCHWEINSBURG, INDIVIDUALLY AND ON BEHALF OF ALL
 20 OTHERS SIMILARLY-SITUATED, PLAINTIFF v. PARAGON SYSTEMS, INC.
 21 DBA PARASYS, INC., AND DOES 1 THROUGH 100, INCLUSIVE,
 22 DEFENDANT, designated as Case No. BC422721. The Complaint asserts the
 23 following claims for relief: (1) Failure to Provide Meal and/or Rest Breaks (Labor
 24 Code §§ 226.7, 512); (2) Failure to Provide Accurate Itemized Wage Statements
 25 (Labor Code §§ 226 and 1174); (3) Failure to Pay Wages Due (Labor Code §§ 203-
 26 204, 510, and 1198); and (4) Unfair Business Practices under the Unfair Competition
 27 Act (Business & Professions Code §§ 17200-17208). A true and correct copy of the
 28 Summons and Complaint is attached hereto and incorporated herein as Exhibit "A".

1 7. On October 8, 2009, Defendant, through its agent for service of process,
2 was served with a copy of a Summons and the Complaint.

3 8. As of the date of this Notice of Removal, no other parties have been
4 named or served with the Summons and Complaint in this action.

5 9. On October 27, 2009, this matter was reassigned from Department 311
6 before Judge Carl. J. West to Department 39 before Judge Michael C. Solner. A true
7 and correct copy of the Court's Order reassigning this matter is attached hereto as
8 Exhibit "B."

9 10 On November 5, 2009, Defendant filed its Answer to Plaintiff's
10 Complaint in the Superior Court of the County of Los Angeles. A true and correct
11 copy of Defendant's Answer is attached hereto and incorporated herein as Exhibit
12 "C".

13 11 This Notice of Removal is timely filed pursuant to 28 U.S.C. section
14 1446(b) because Defendant has filed this Notice within 30 days after service of the
15 Summons and Complaint, and less than one year after commencement of this action,
16 as required under 28 U.S.C. section 1446(b).

17 12. The Complaint also names as Defendants "DOES 1 through 100,
18 inclusive." Defendant is informed and believes and on that basis alleges that none of
19 the fictitiously-named defendants have been served with a copy of the Summons and
20 Complaint. Fictitiously-named defendants are not parties to the above-captioned
21 action and need not consent to removal. *See Fristoe v. Reynolds Metals Co.*, 615 F.2d
22 1209, 1213 (9th Cir. 1980); 28 U.S.C. section 1441(a).

23 13. All pleadings, process or orders received by Defendant in the case are
24 attached hereto. Defendant has received no other process, pleadings or orders.

25 **III. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS HERE.**

26 14. Plaintiff resides in Aliso Viejo, California, where he has received his
27 paychecks since December 2, 2008. Declaration of Nicole Ferritto ("Ferritto Decl.") ¶

28 15. Consequently, Plaintiff is a citizen of California for purposes of diversity

jurisdiction. For diversity purposes, a person is a “citizen” of the state in which he or she is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir. 1983); *see also LeBlanc v. Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship determined at the time the lawsuit is filed); *see also Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991). A person’s domicile is the place he or she resides with the intention to remain or to which he or she intends to return. *See Kanter v. Warner–Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

15. For diversity purposes, a corporation is deemed to be a citizen of the state in which it has been incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). A corporation’s principal place of business is the state containing “‘a substantial predominance of corporate operations.’” *Tosco Corp. v. Communities for a Better Environment*, 236 F.3d 495, 500 (9th Cir. 2001) (quoting *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990)). If no state contains a “substantial predominance” of corporate operations, courts apply the “nerve center” test, which locates the corporation’s principal place of business in the state where “the majority of its executive and administrative functions are performed.” *Id.*

16. Defendant is, and was at the time this action was commenced, a corporation incorporated under the laws of the State of Alabama, with its principal place of business in Chantilly, Virginia. Ferritto Decl. ¶ 9.

17. As the following demonstrates, there is no state where a substantial predominance of Defendant’s business takes place. *Breitman v. May Co California*, 37 F.3d 562, 564 (9th Cir. 1994).

18. Defendant provides security services to United States government facilities in twelve (12) states, including, Maryland, South Carolina, Georgia, New York, Mississippi, California, Oregon, Washington and Pennsylvania, as well as the District of Columbia. Ferritto Decl. ¶ 2.

19. Defendant employs individuals in each of the states in which it provides security services, with an aggregate workforce of more than 2,400. Ferritto Decl. ¶ 4.

1 The number of employees in California, however, represents less than 19% of the total
 2 workforce. *Id.* at ¶ 6. Moreover, Defendant employs more individuals in Maryland
 3 than it does in California; Maryland accounts for 26% of Paragon's workforce. *Id.* at
 4 ¶¶ 5, 6.

5 20. The latest estimated population for the State of California is projected to
 6 be 36,756,666 (2008)¹; for the State of Maryland is projected to be 5,533,597 (2008)²;
 7 for the State of Georgia is projected to be 9,685,744 (2008)³; and for the State of
 8 Virginia is projected to be 7,769,089 (2008)⁴. As compared to the total population of
 9 California, Defendant employs relatively few employees in California as compared
 10 with less populous states such as Maryland and Virginia. *Tosco Corp.*, 236 F.3d at
 11 501 (finding where 24% of Tosco's employees worked in Arizona compared to 21%
 12 in California, a substantial predominance of employees were not located in
 13 California).

14 21. Consequently, no single state has a substantial predominance
 15 (significantly larger portion) of Defendant's employees. *See e.g., Indus. Tectonics,*
 16 *Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990); *see also Tosco Corp.*, 236
 17 F.3d at 500.

18 22. Similarly, no single state generates a substantial predominance of the
 19 Defendant's revenues. Defendant derives more sales revenue from Maryland than any
 20 other state (including California). Ferritto Decl. ¶ 8. In fact, California accounts for
 21 less than 25% of Defendant's sales figures. *Id.*

22 23. Likewise, Defendant does not own any property in California. Ferritto
 23

24 ¹ U.S. Census Bureau, State & County QuickFacts, at
 25 <http://quickfacts.census.gov/qfd/states/06000.html> (last visited October 15, 2009).

26 ² U.S. Census Bureau, State & County QuickFacts, at
 27 <http://quickfacts.census.gov/qfd/states/04000.html> (last visited October 15, 2009).

28 ³ U.S. Census Bureau, State & County QuickFacts, at
<http://quickfacts.census.gov/qfd/states/48000.html> (last visited October 15, 2009).

⁴ U.S. Census Bureau, State & County QuickFacts, at
<http://quickfacts.census.gov/qfd/states/25000.html> (last visited October 15, 2009).

1 Decl. ¶ 7.

2 24. Therefore, Defendant does not have a substantial predominance of its
3 operations in California. Rather, Defendant's principal place of business should be
4 where its nerve center is located. *See, e.g., J.A. Olson Co. v. Winona*, 818 F.2d 401,
5 407 (5th Cir. 1987) ("[w]here a corporation is engaged in far-flung and varied
6 activities which are carried on in different states, its principal place of business is the
7 nerve center from which it radiates out to its constituent parts and from which its
8 offers direct, control and coordinate all activities without regard to locale, in the
9 furtherance of the corporate objective." (citing *Scot Typewriter Co. v. Underwood*
10 *Corp.*, 170 F. Supp. 862 (S.D. N.Y. 1959) (emphasis added)); see also *Ho v. Ikon*
11 *Office Solutions, Inc.*, 143 F. Supp. 2d 1163, 1166 (N.D. Cal. 2001) (concluding that
12 no state contained a substantial predominance of business activity where the defendant
13 corporation conducted business in all fifty states and had 8.6% of its employees in
14 California, 7.4% in Texas, 4.9% in Pennsylvania, 4.9% in New York, and 4.8% in
15 Florida; this composition of employees meant that the corporation's contact was
16 "spread relatively evenly"); *Arellano v. Home Depot U.S.A., Inc.*, 245 F. Supp. 2d
17 1102, 1106 (S.D. Cal. 2003) (although the employer had vastly higher percentage of
18 employees in California, the District Court found that operations did not predominate
19 in California because, among other things, California was the nation's most populous
20 state and one would expect operations to be proportionate to state size for national
21 corporations.)

22 25. The relevant considerations under the "nerve center" test include the
23 following:

- 24 a. where the directors and stockholders meet;
- 25 b. where the executives live and have their offices;
- 26 c. where the administrative and financial offices are located and the
27 records kept;
- 28 d. where the corporate income tax return is filed;

e. where the "home office" is located; and

f. where day-to-day control of the business is exercised.

See Unger v. Del E. Webb Corp., 233 F. Supp. 713, 716 (N.D. Cal. 1964).

26. As the following attests, there can be no dispute that Defendant's nerve center is located in Chantilly, Virginia.

27. Defendant's corporate headquarters are located at 14160 Newbrook Drive, Suite 210, Chantilly, Virginia 20151. Ferritto Decl. ¶ 9.

28. The administrative functions crucial to Defendant's day-to-day operations are conducted in its Chantilly, Virginia location. Ferritto Decl. ¶ 10. The respective officers for these departments work in Chantilly, Virginia and are responsible for developing policies and protocols for Defendant's nationwide operations. *Id.* In addition, Defendant's Board of Directors meets in Chantilly, Virginia or Atlanta, Georgia. *Id.* at ¶ 11.

29. For all material purposes, Defendant holds Virginia out to be its principal place of business.

30. Consequently, the nerve center for Defendant is located in Virginia, and Defendant (an Alabama corporation) is a citizen of the states of Alabama and Virginia for the purposes of determining diversity of citizenship, but not California.

31. Accordingly, Plaintiff is a citizen of a state different from Defendant.

a. The Amount In Controversy Exceeds \$75,000.

32. Plaintiff's Complaint is silent as to the total amount of damages claimed. The failure of the Complaint to specify the total amount of damages sought by Plaintiff does not deprive this Court of jurisdiction. *See White v. J.C. Penney Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D. W.Va. 1994) (defendant may remove suit to federal court notwithstanding the failure of Plaintiff to plead a specific dollar amount in controversy; if the rules were otherwise, "any Plaintiff could avoid removal simply by declining ... to place a specific dollar claim upon its claim."). Defendant needs only to establish by a *preponderance of evidence* that Plaintiff's claims exceed the

jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997) (same). As the foregoing demonstrates, Defendant is able to meet this burden.

33. Plaintiff has asserted claims for 1) Failure to Provide Meal and/or Rest Breaks (Labor Code §§ 226.7, 512); (2) Failure to Provide Accurate Itemized Wage Statements (Labor Code §§ 226 and 1174); (3) Failure to Pay Wages Due (Labor Code §§ 203-204, 510, and 1198); and (4) Unfair Business Practices under the Unfair Competition Act (Business & Professions Code §§ 17200-17208). Ex. A, Complaint.

34. Plaintiff's most recent wage rate is \$27.25 per hour, or \$52,320 per year. Ferritto Decl. ¶ 15.

35. With regard to Plaintiff's individual claims, there are approximately 85 work weeks at issue during the statutory period, based on Plaintiff's hire date of March 14, 2008. Ferritto Decl. ¶ 15.

36. Additionally, Plaintiff contends he was regularly required to, and did, work through meal periods and rest periods and is entitled to one hour of regular pay per violation. Ex. A, Complaint, ¶¶ 25, 33, 34. Assuming that Plaintiff missed one meal period per day and one rest period per day, and is entitled to one hour of regular pay per violation during the four-year statutory period, Plaintiff's personal claim for missed meal and rest periods is \$23,162.50 (one missed meal period and one missed rest period for every work day (5) for 85 workweeks multiplied by the hourly rate, \$27.25, for each missed meal period equals \$23,162.50)

37. Plaintiff also alleges that he is entitled to damages and penalties for claimed violations of Labor Code § 226(a), which requires an employer to furnish accurate itemized wage statements to its employees. Ex. A, Complaint, ¶¶ 33 – 36. Labor Code § 226(e) provides as follows:

“[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per

1 employee for each violation in a subsequent pay period, not
2 exceeding an aggregate penalty of four thousand dollars
3 (\$4,000), and is entitled to an aware of costs and reasonable
4 attorneys fees. Cal. Labor Code § 226(e).

5 38. Section 226(e) carries a one-year limitations period. Plaintiff has been an
6 employee of Defendant since March 14, 2008, in excess of one year. Therefore, if
7 Plaintiff should succeed in demonstrating that he received inaccurate wage statements,
8 he would be entitled to \$50 for the first violation and \$100 for each subsequent
9 violation within a one-year period, amounting to \$2550, based on bi-weekly pay
10 periods. Ferrito Decl. ¶ 15.

11 39. Plaintiff also asserts that he and other class members did not receive all
12 wages due within the time dictated by Labor Code section 204. Ex. A, Complaint at
13 ¶¶ 45, 48. Labor Code section 204 sets forth the timing of wage payments to
14 individuals paid on a semi-monthly basis. Labor Code section 210 sets forth the
15 penalties for violation of section 204 as \$100 for each initial violation and \$200 for
16 each subsequent violation, plus 25% of the amount unlawfully withheld. By virtue of
17 asserting a claim for purported violation of California Business & Professions Code
18 section 17200, a four-year statute of limitations applies to his claim for unpaid wages.
19 See CAL. BUS. & PROF. CODE § 17208.

20 40. Plaintiff was employed for approximately 85 workweeks since his hire in
21 March 2008. Ferrito Decl. ¶ 15. This represents approximately 42 bi-weekly pay
22 periods, for a total of approximately \$8300 in penalties under Labor Code section 210,
23 plus 25% of the amount unlawfully withheld. Plaintiff's Complaint is silent as to the
24 amount of wages unlawfully withheld. Plaintiff was earning an annual wage of
25 approximately \$52,320, rendering a potential penalty of \$20,928 in addition to the
26 \$8300 listed above (based on an annual salary of \$52,320 multiplied by approximately
27 1.6 years of employment, times 25%). Thus, the total amount at issue for Plaintiff
28 based on Labor Code sections 204 and 210 is approximately \$29,928.

41. In addition to the foregoing statutory amounts, Plaintiff alleges that

1 “[m]ore than thirty days has elapsed since Representative Plaintiff and certain class
 2 Members were terminated and/or resigned from the Defendant’s employ” and
 3 “Representative Plaintiff and certain class members are entitled to recover penalties of
 4 thirty days’ wages, pursuant to California Labor Code § 203...” Ex. A at ¶¶ 49-50.
 5 Plaintiff’s wage was \$27.25 per hour, or \$218 per day, times 30 days = \$6,540.
 6 Ferritto Decl. ¶ 15.⁵

7 42. Plaintiff also alleges that “[d]uring the class period, Representative
 8 Plaintiff and Class Members ... perform[ed] work for Paragon, often times in excess of
 9 eight hours in a workday and/or forty hours in a workweek.” Ex. A, Complaint at ¶
 10 51. Plaintiff further alleges that “Defendant refused and/or failed to compensate
 11 Representative Plaintiff and the Class Members for some and/or all of wages earned,
 12 in violation of the California Labor Code and the applicable IWC Wage Order.” Ex.
 13 A, Complaint at ¶ 52. Assuming Plaintiff worked one hour per day more than eight
 14 hours, for which he was not compensated, at an overtime rate of \$40.87 (1.5 times
 15 regular rate of \$27.25), Plaintiff could potentially recover \$17,369.75 in unpaid
 16 overtime (\$40.87 times five (5) days per week, times 85 weeks employed).

17 43. Plaintiff also seeks the imposition of all statutory penalties available
 18 pursuant to California Labor Code §§ 512, 1174, 1197 and Business & Professions
 19 Code §§ 17200-08, *et seq.* Ex. A, Complaint, Prayer, ¶¶ c, d, e, f, and i.

20 44. Plaintiff further asserts that he is seeking “interest on the amount of any
 21 and all economic losses,” “reasonable attorneys’ fees,” and “costs of suit.” Ex. A,
 22 Complaint, Prayer ¶¶ l, m, n.

23 45. It is well-settled that in determining whether a complaint meets the
 24

25 ⁵ Plaintiff definitively alleges at multiple points in his Complaint that he is a former
 26 employee. See Ex. A, Complaint at ¶¶ 49-50. According to Defendant’s records,
 27 however, Plaintiff is a current employee. Nevertheless, the plain allegations on the
 28 face of the Complaint allege that Plaintiff is a former employee whose employment
 was terminated more than 30 days prior to filing of the Complaint, and thus, this
 Notice of Removal assumes that fact as true for the purpose of calculating the amount
 in controversy.

1 amount in controversy requirement, the Court should consider attorneys' fees. *See,*
 2 *e.g., Bell v. Preferred Life Assur. Soc. of Montgomery, Ala.*, 320 U.S. 238, 64 S.Ct. 5
 3 (1943); *Goldberg v. CPC Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982) (attorneys'
 4 fees may be taken into account to determine jurisdictional amounts); *see also Gibson*
 5 *v. Chrysler Corp.*, 261 F.3d 927 (9th Cir. 2001).

6 46. It is not unusual in matters such as this one for attorneys' fees and costs
 7 to amount to tens of thousands of dollars.

8 47. Based on the above, *exclusive* of attorneys' fees, interest and costs, the
 9 amount at issue regarding Plaintiff's individual claims is \$79,549.75. Thus, by virtue
 10 of the claims asserted in this case, the preponderance of the evidence indicates that the
 11 amount in controversy is greater than \$75,000 and removal is proper. *See De Aguillar*
 12 *v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir. 1995) (removal proper where "the
 13 defendant can show by a preponderance of the evidence that the amount in
 14 controversy is greater than the jurisdictional amount"); *accord Gaus v. Miles, Inc.*,
 15 980 F.2d 564, 566-67 (9th Cir. 1992); *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295,
 16 298 (5th Cir. 1999) (facts presented in notice of removal, combined with plaintiff's
 17 allegations, sufficient to support finding that jurisdictional limits satisfied).

18 48. This Court has jurisdiction over absent class members pursuant to 28
 19 U.S.C. section 1367. *See Exxon Mobil v. Allapattah Services*, 545 U.S. 546, 125 S.Ct.
 20 2611 (2005).

21 **IV. JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS** 22 **ACT**

23 49. Section 4 of the Class Action Fairness Act of 2005, 28 U.S.C. section
 24 1332(d)(2), has been amended to read, in relevant part:

25 The district courts shall have original jurisdiction of any
 26 civil action in which the matter in controversy exceeds the
 27 sum or value of \$5,000,000, exclusive of interest and costs,
 28 and is a class action in which – (A) any member of a class of

1 plaintiffs is a citizen of a State different from any defendant.

2 50. While there are limited exceptions to this new rule of original jurisdiction
3 contained in amended 28 U.S.C. section 1332(d)(3)-(5), none of them are applicable
4 here.

5 51. This is a civil action over which this Court has original jurisdiction under
6 28 U.S.C. section 1332(d), in that it is a civil action filed as a class action wherein the
7 matter in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs,
8 and at least one member (if not all) of the class of plaintiffs is a citizen of a state
9 different from all named defendants.

10 52. This action has been brought on behalf of a class of well more than 100
11 individuals. Plaintiff seeks to represent "All persons who were employed by Paragon
12 Systems, Inc., dba Parasys, Inc., in any non-exempt Security Officer positions within
13 the State of California, at any time between September 28, 2005 and the present." *See*
14 Exh. A, Compl., ¶ 22. From April 1, 2007 to the present, Defendant has employed
15 approximately 500 non-exempt Security Officers within the State of California⁶.
16 Ferritto Decl. at ¶ 17.

17 53. Plaintiff is a citizen of the State of California. For diversity purposes, a
18 person is a "citizen" of the state in which he or she is domiciled. *See Kantor v.*
19 *Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir. 1983); *see also LeBlanc v.*
20 *Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship determined at the time the
21 lawsuit is filed); *see also Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10
22 (1st Cir. 1991). A person's domicile is the place he or she resides with the intention to
23 remain or to which he or she intends to return. *See Kanter v. Warner-Lambert Co.*,
24 265 F.3d 853, 857 (9th Cir. 2001). Plaintiff resides in Aliso Viejo, California, where
25 he has received his paychecks since December 2, 2008. Ferritto Decl. ¶ 16.

26 54. Plaintiff seeks to represent similarly situated employees of Defendant,

27
28 ⁶ Prior to April 1, 2007, Defendant Paragon did not have any employees in California.
Ferritto Decl. ¶ 16.

1 who worked in the State of California from September 28, 2005 to the present. *See*
2 Exh. A, Compl., ¶¶ 1, 16, 22, and 24.

3 55. A corporation is deemed to be a citizen of the state in which it has been
4 incorporated and where it has its principal place of business. 28 U.S.C. § 1332(c)(1).
5 The Ninth Circuit has adopted a “total activities” test for determining a corporation’s
6 principal place of business. *See Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090,
7 1094 (9th Cir. 1990). Relevant factors, include: (1) the location of the majority of the
8 corporation’s (a) employees, (b) tangible property, and (c) production activities, and
9 (2) where most of the corporation’s (a) income is earned, (b) purchases are made, and
10 (c) sales take place. *See Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th
11 Cir. 1990).

12 56. At present, Paragon employs over 2,400 employees in the United States.
13 Ferritto Decl. ¶ 4. Of its 2,400 employees, only 445 (19%) of them are located in
14 California, while 629 (26%) of Defendant’s employees are located in Maryland.
15 Ferritto Decl. ¶ 6.

16 57. No single state generates a substantial predominance of the Defendant’s
17 revenues. Defendant derives more sales revenue from Maryland than any other state
18 (including California). Ferritto Decl. ¶ 8. In fact, California accounts for less than
19 25% of Defendant’s sales. *Id.*

20 58. Defendant’s corporate headquarters are located at 14160 Newbrook
21 Drive, Suite 210, Chantilly, Virginia 20151. Ferritto Decl. ¶ 9.

22 59. The administrative functions crucial to Defendant’s day-to-day
23 operations are conducted in its Chantilly, Virginia location. Ferritto Decl. ¶ 10. The
24 respective officers for these departments work in Chantilly, Virginia and are
25 responsible for developing policies and protocols for Defendant’s nationwide
26 operations. *Id.* In addition, Defendant’s Board of Directors meets in Chantilly,
27 Virginia or Atlanta, Georgia. *Id.* at ¶ 11.

28 60. For all material purposes, Defendant holds Virginia out to be its principal

1 place of business.

2 61. Consequently, the nerve center for Defendant is located in Virginia, and
3 Defendant (an Alabama corporation) is a citizen of the states of Alabama and Virginia
4 for the purposes of determining diversity of citizenship, but not California.
5 Accordingly, Plaintiff is a citizen of a state different from Defendant.

6 62. Plaintiff, who is a citizen of California, is a citizen of a state different
7 from Defendant. *See* 28 U.S.C. § 1441(a).

8 **a. Amount In Controversy Under The Class Action**
9 **Fairness Act**

10 63. CAFA, 28 U.S.C. section 1332(d), authorizes the removal of class action
11 cases in which, among other factors mentioned below, the amount in controversy for
12 all class members exceeds \$5,000,000. Defendants deny the validity and merit of all
13 of Plaintiff's claims, the legal theories upon which they are purportedly based, and the
14 claims for monetary and other relief that flow from them. However, assuming
15 Plaintiff's claims to be accurate for purposes of this removal only, it is readily
16 apparent that the monetary relief sought in this action exceeds the jurisdictional
17 minimum.

18 64. On behalf of "All persons who were employed by Paragon Systems, Inc.
19 . . . in any non-exempt security guard positions within the State of California" at any
20 time in the past four years, Plaintiff's Complaint seeks unpaid wages for
21 uncompensated meal and rest periods, interest on all due and unpaid wages, penalties
22 and wages under Labor Code Section 203, penalties for defective wage statements
23 under Labor Code Section 226, and attorneys fees and costs. *See* Exh. A, Compl. ¶¶
24 1-2, 28, Prayer for Relief ¶ m. Plaintiff's claims are based upon the allegations that
25 Defendants: (1) failed to pay for hours worked; (2) did not provide accurate itemized
26 statements reflecting total hours worked; and (3) failed to pay all wages due at the
27 termination of employment. *See* Exh. A, Compl. ¶¶ 1-2.

28 65. However, Plaintiff's Complaint is silent as to the total amount of

1 monetary relief claimed. The failure of the Complaint to specify the total amount of
2 monetary relief sought by Plaintiff, and the putative class, does not deprive this Court
3 of jurisdiction. *See White v. J.C. Penny Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D.W.Va.
4 1994) (Defendant may remove suit to federal court notwithstanding the failure of
5 Plaintiff to plead a specific dollar amount in controversy; if the rules were otherwise,
6 “any Plaintiff could avoid removal simply by declining . . . to place a specific dollar
7 claim upon its claim”). Defendant need only establish by a preponderance of evidence
8 that Plaintiff’s claims exceeds the jurisdictional minimum. *Sanchez v. Monumental*
9 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *Singer v. State Farm Mutual Auto.*
10 *Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997).

11 66. This matter meets the 100 proposed class members requirement
12 articulated in CAFA because, during the proposed Class Period, Paragon employed
13 approximately 500 non-exempt Security Officers in the State of California. *See*
14 *Ferritto Decl.* ¶ 17.

15 67. Within the class period, Paragon first obtained its contract with the
16 Federal Aviation Administration (“FAA”), and thus first employed putative class
17 members in California, on April 1, 2007. *Ferritto Decl.* at ¶ 17. Paragon
18 subsequently obtained an additional contract in California on March 15, 2008.
19 *Ferritto Decl.* at ¶ 20. In total, members of the putative class worked approximately
20 37,000 workweeks during the class period. *Ferritto Decl.* at ¶ 21.

21 **a. Amount in Controversy for Plaintiff’s Claim For Meal And**
22 **Rest Violations Claim.**

23 68. Plaintiff contends in his Complaint that the putative class members were
24 regularly required to, and did work through meal periods and rest periods and are
25 entitled to one hour of regular pay per violation. Ex. A, Complaint, ¶ 25, 33, 34.
26 Assuming that all putative class members missed one meal period per day and one rest
27 period per day, and were entitled to one hour of regular pay per violation during the
28 four-year class period for each violation, Plaintiff’s claim for missed meal and rest

1 periods is \$8,854,100 (one missed meal period for every work day (5) for 37,000
2 workweeks multiplied by the hourly rate, \$23.93, for each missed meal period equals
3 \$4,427,050; plus one missed rest period for every work day (5) for 37,000 workweeks
4 multiplied by the hourly rate, \$23.93, for each missed rest period equals \$4,427,050;
5 for a total of \$8,854,100 allocated to missed meal and rest periods).

6 **b. Amount in Controversy for Plaintiff's Wage Statement Claim.**

7 69. Plaintiff also contends in his Complaint that Defendant knowingly and
8 intentionally failed to furnish "timely, accurate itemized wage statements" setting
9 forth "actual gross wages earned, net wages earned, or the appropriate deductions."
10 *See* Exh. A., Complaint ¶ 41.

11 70. Plaintiff asserts that the putative class members are entitled to damages
12 and penalties for claimed violations of Labor Code § 226(a), which requires an
13 employer to furnish accurate itemized wage statements to its employees. *See*, Exh. A,
14 Compl., ¶¶ 35-42. Labor Code § 226(e) provides as follows:

15 [a]n employee suffering injury as a result of a knowing and
16 intentional failure by an employer to comply with
17 subdivision (a) is entitled to recover the greater of all actual
18 damages or fifty dollars (\$50) for the initial pay period in
19 which a violation occurs and one hundred dollars (\$100) per
20 employee for each violation in a subsequent pay period, not
21 exceeding an aggregate penalty of four thousand dollars
22 (\$4,000), and is entitled to an aware of costs and reasonable
23 attorneys fees.

24 CAL. LAB. CODE § 226(e).

25 71. The putative class consists of approximately 500 putative class members,
26 and the statute of limitations for a claim under Labor Code section 226 is one year.
27 Within the applicable limitations period, approximately 450 putative class members
28 were employed by Defendant. *See* Ferritto Decl. ¶ 21; CAL. CIV. PROC. CODE §

340(a). Each putative class member would be entitled to up to \$2,550 in penalties under the statute (\$50 for the first pay period and \$100 for each subsequent pay period during the one year statutory limitations period for each allegedly defective wage statement; employees were paid bi-weekly; *see* Ferritto Decl. ¶ 14). Therefore, Plaintiff's claim for damages/statutory penalties under Labor Code § 226 alone is \$1,147,500 [450 putative class members x \$2550 maximum recovery per employee = \$1,147,500].

c. Amount In Controversy In Plaintiff's Claims For Unpaid Wages.

72. In addition to the foregoing statutory amounts, Plaintiff alleges that "certain class members voluntarily or involuntarily severed employment with Paragon, yet were not paid timely wages due immediately upon the involuntary termination or within seventy-two hours of the voluntary termination." *See* Exh. A, Complaint ¶ 48. As a result, Plaintiff seeks to recover penalties of thirty (30) days' wages on behalf of the class members Plaintiff alleges were not timely paid all wages due. *See id.* Plaintiff asserts that "more than thirty days has elapsed since" certain class members were terminated and/or resigned from Paragon. *See id.* at ¶ 49. The average wage of a putative class member is approximately \$23.93 per hour, or \$191.44 per day, times 30 days = \$5,743.20. Ferritto Decl. ¶ 18. During the Class Period, approximately 51 employees separated from Paragon. Ferritto Decl. ¶ 22. Thirty days' wages for these separated employees potentially amounts to \$292,903.20 [\$5,743.20 x 51 employees].

d. Plaintiff Also Seeks Attorneys' Fees In This Action.

73. Plaintiff also seeks an award of attorneys' fees. *See* Exh. A, Complaint, Prayer ¶ m. It is well-settled that in determining whether a complaint meets the amount in controversy requirement, the Court should consider attorneys' fees. *See, e.g., Bell v. Preferred Life*, 320 U.S. 238 (1943); *Goldberg v. C.P.C. Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982) (attorneys' fees may be taken into account to

1 determine jurisdictional amounts).


2 74. It is not unusual in wage and hour class actions, particularly class actions
3 with hundreds of putative class members, for attorneys' fees and costs to amount to
4 hundreds of thousands of dollars.

5 75. *Exclusive* of attorneys' fees, interest and costs, the amount in controversy
6 regarding Plaintiff's claims is at least \$10,294,503.20. Accordingly, although
7 Defendant denies Plaintiff's claims of wrongdoing, the jurisdictional minimum is
8 easily satisfied for purposes of determining amount in controversy as it exceeds the
9 \$5,000,000 threshold required under CAFA. *See Singer v. State Farm Mutual Auto*
10 *Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997); *see also Tompkins v. Basic Research LL*,
11 2008 WL 1808316 (E.D. Cal. 2008)(determining the amount in controversy on
12 removal is twofold. First the court must determine if the amount in controversy is
13 facially apparent and if plaintiff alleges damages in excess of the jurisdictional
14 amount, then the jurisdictional amount is presumptively satisfied unless it appears to a
15 legal certainty that the claim is worth less than the jurisdictional amount).

16 **V. NOTICE TO THE COURT AND PARTIES.**

17 76. Contemporaneously with the filing of this Notice of Removal in the
18 United States District Court for the Central District of California, written notice of
19 such filing will be given by the undersigned to Plaintiff's counsel of record and a copy
20 of the Notice of Removal will be filed with the Clerk of the Court for the Superior
21 Court of the County of Los Angeles, California.

22 Dated: November 5, 2009

23
24 
25 ELIZABETH STAGGS WILSON
26 DOMINIC A. MESSIHA
27 LITTLER MENDELSON
28 A Professional Corporation
Attorneys for Defendant
PARAGON SYSTEMS, INC.

Firmwide:92680441.3 050542.1012

EXHIBIT A

Fm:Scott Cole & Associates, APC To:Maricela;Schweinsburg (12136171662)

14:10 09/29/09GMT-04 Pg 02-02

10/8 → 2:58P

SUMMONS
(CITACION JUDICIAL)**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):

PARAGON SYSTEMS, INC., dba PARASYS, INC., and DOES 1 through 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DONALD SCHWEINSBURG, individually, and on behalf of all others similarly situated,

SUM-100
FOR COURT USE ONLY
SÓLO PARA USO DE LA CORTE
CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 29 2009

John A. Clarke, Executive Officer/Clerk
By AMBER LAFLAUR-CLAYTON Deputy**NOTICE:** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no pueda pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no pueda pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Los Angeles Superior Court

Stanley Mosk Courthouse, Central District

111 N. Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

BC422721

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kevin R. Allen, Esq. (S.B. # 237994), 1970 Broadway, Ninth Floor, Oakland, CA 94612 (510) 891-9800

DATE:

(Fecha)

JOHN A. CLARKE, CLERK by

(Secretario)

AMBER LAFLAUR-CLAYTON

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Paragon Systems, Inc., dba

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
- ☐ other (specify):

- ☐ by personal delivery on (date):

SEP 29 2009

1 Scott Edward Cole, Esq. (S.B. # 160744)
 2 Kevin R. Allen, Esq. (S.B. #237994)
 3 SCOTT COLE & ASSOCIATES, APC
 4 1970 Broadway, Ninth Floor
 5 Oakland, California 94612
 Telephone: (510) 891-9800
 Facsimile: (510) 891-7030
 Web: www.scalaw.com

6 Attorneys for the Representative Plaintiff
 7 and the Plaintiff Class

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

SEP 28 2009

John A. Clark, Executive Officer/Clerk
 By Dorothy Swain, Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF LOS ANGELES

11 DONALD SCHWEINSBURG,
 12 individually, and on behalf of all others
 similarly situated,

13 Plaintiffs,

14 vs.

15 PARAGON SYSTEMS, INC., dba
 16 PARASYS, INC., and DOES 1 through
 100, inclusive,

17 Defendants.

Case No.:

BC422721

CLASS ACTION

COMPLAINT FOR DAMAGES,
 INJUNCTIVE RELIEF AND RESTITUTION

DEMAND FOR JURY TRIAL

BY FAX

19 Representative Plaintiff Donald Schweinsburg alleges as follows:

21 PRELIMINARY STATEMENT

22 1. This is a class action seeking unpaid wages, including meal and rest period
 23 compensation, injunctive and other equitable relief, and reasonable attorneys' fees and costs, under,
 24 *inter alia*, Industrial Welfare Commission Wage Order No. 4, California Labor Code §§ 200-204,
 25 inclusive, 226, 226.7, 510, 512, 1174, 1194, 1197 and 1198, and Business & Professions Code §
 26 17200, *et seq.* Representative plaintiff Donald Schweinsburg ("Schweinsburg" and/or
 27 "Representative Plaintiff") brings this action on behalf of himself and all other persons similarly
 28 situated (hereinafter referred to as the "Class Members" and/or the "Plaintiff Class") who are or have

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 OAKLAND, CA 94612
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1 been employed by defendant Paragon Systems, Inc., dba Parasys, Inc. and/or Does 1 through 100,
2 inclusive (collectively "Paragon" and/or "Defendant"), in any non-exempt security guard position(s)
3 within the State of California, at any time between September 28, 2005 and the present.
4 Representative Plaintiff, on behalf of himself and the Class Members, also seeks injunctive relief and
5 restitution of all benefits Paragon has enjoyed from its unfair, unlawful, and/or fraudulent business
6 practices under Business and Professions Code §§ 17200-17208.

7 2. The "Class Period" is designated as the time from September 28, 2005 through the
8 trial date and is based upon the allegation that Defendant's violations of California's wage and hour
9 laws, as described more fully below, have been ongoing during that time. During the Class Period,
10 Paragon has had a consistent policy of (1) unlawfully denying Representative Plaintiff and the Class
11 Members statutorily-mandated meal and rest periods, (2) willfully failing to pay compensation owed
12 to the Representative Plaintiff and Class Members in a timely manner, including compensation owed
13 to Class Members whose employment with Paragon has been terminated, and (3) willfully failing
14 to provide Plaintiff and the Class Members with accurate semimonthly itemized wage statements.

15 INTRODUCTION

16 3. The Representative Plaintiff is informed and believes and, based thereon, alleges that,
17 within the Class Period, defendant Paragon has held contracts with various clients, including the
18 United States Government, for the placement of Defendant's non-exempt security guards at facilities
19 within the State of California. In so doing, Paragon has employed hundreds of individuals in non-
20 exempt security guard positions in recent years alone to work at locations within the State of
21 California.

22 4. Despite actual knowledge of these facts and California's legal mandates, Paragon has
23 enjoyed an advantage over its competition and imposed a resultant disadvantage upon its workers
24 by electing not to pay its security guards all wages to which they are entitled, not providing them
25 with statutorily-mandated duty-free and uninterrupted meal and rest periods, and not providing
26 accurate and complete semimonthly itemized wage statements.

27 ///
28

5. Representative Plaintiff is informed and believes, and based thereon alleges, that officers of Paragon knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

6. Despite Defendant's knowledge of the Plaintiff Class' entitlement to unpaid wages, meal and/or rest periods for all applicable work periods, Paragon failed to provide same to members of the Plaintiff Class, in violation of the California Labor Code, Industrial Welfare Commission Wage Order No. 4 and Title 8 of the California Code of Regulations. This action is brought to redress and end this long-time pattern of unlawful conduct.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the Representative Plaintiff and the Class Members' claims for unpaid wages, expenses and/or penalties under, *inter alia*, Industrial Welfare Commission Wage Order No. 4 and Title 8 of the California Code of Regulations, Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1197 and 1198.

8. This Court also has jurisdiction over the Representative Plaintiff's and Class Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from Defendant's unfair, unlawful and/or fraudulent business practices under Business & Professions Code § 17200, *et seq.*

9. Venue as to defendant Paragon is proper in this judicial district, pursuant to Code of Civil Procedure § 395(a) and/or § 395.5. Defendant Paragon holds contracts in the County of Los Angeles, transacts business, has agents, and is otherwise within this Court's jurisdiction for purpose of service of process. The unlawful acts alleged herein have a direct effect on the Representative Plaintiff and those similarly situated within the State of California and within the County of Los Angeles. Defendant operates facilities and has employed numerous Class Members in the County of Los Angeles, as well as in other counties within the State of California.

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PLAINTIFFS

10. During the time period relevant herein, Schweinsburg is/was a natural person employed by Paragon in a non-exempt security guard position which was entitled and continues to enjoy an entitlement to various conditions of employment, including meal and rest periods.

11. In said position, Schweinsburg was required to work and did work, during the Class Period, shifts exceeding five hours without uninterrupted, unrestricted meal periods of not less than thirty minutes.

12. In said position, Schweinsburg was required to work and did work four hours or a major fraction thereof without being afforded a net ten minute rest period.

13. Representative Plaintiff is informed and believes and, on that basis, alleges that this conduct of Paragon is/was commonplace at every California facility at which Paragon's security employees worked on its behalf.

14. As used throughout this Complaint, the terms "Class Members" and/or the "Plaintiff Class" refer to the named plaintiff herein as well as each and every person eligible for membership in the Plaintiff Class, as further described and defined below.

15. At all times relevant herein, Representative Plaintiff was/is a person within the Plaintiff Class further described and defined herein.

16. Representative Plaintiff brings this action on behalf of himself and as a class action, pursuant to California Code of Civil Procedure § 382, on behalf of all persons similarly situated and proximately damaged by the unlawful conduct described herein.

DEFENDANTS

17. At all times relevant herein, defendant Paragon Systems, Inc., dba Parasys, Inc., was and is a business entity, duly licensed, located and doing business in, but not limited to, the County of Los Angeles, in the State of California.

18. Representative Plaintiff is informed and believes and, based thereon, alleges that defendant Paragon directly or indirectly employs and, since September 28, 2005, has employed and/or exercised control over the wages, hours and/or working conditions of Representative Plaintiff

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1 and the Class Members within various California counties, including, but not necessarily limited to,
2 the County of Los Angeles.

3 19. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
4 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some/each
5 of the remaining defendants. The Representative Plaintiff is informed and believes and, on that basis,
6 alleges that, at all times herein relevant, each of the defendants identified as Does 1 through 100,
7 inclusive, employed and/or exercised control over the wages, hours and/or working conditions of
8 Representative Plaintiff and the Class Members at various California locations, as identified in the
9 preceding paragraph.

10 20. Representative Plaintiff is unaware of the true names and capacities of those
11 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
12 such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when
13 same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that
14 each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified
15 and/or authorized the conduct herein alleged, and that Representative Plaintiff's and the Class
16 Members' damages, as herein alleged, were proximately caused thereby.

17 21. The Representative Plaintiff is informed and believes and, on that basis, alleges that,
18 at all times herein relevant, each of the defendants was and/or is the agent and/or employee of each
19 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
20 scope of such agency and/or employment.

22 CLASS ACTION ALLEGATIONS

23 22. Representative Plaintiff brings this action on behalf of himself and as a class action
24 on behalf of the following Plaintiff Class:

25 All persons who were employed by Paragon Systems, Inc., dba
26 Parasys, Inc., in any non-exempt security guard positions within the
27 State of California, at any time between September 28, 2005 and the
28 present.

///

///

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- 1 23. Defendant, its officers and directors, are excluded from the Plaintiff Class.
- 2 24. This action has been brought and may be properly maintained as a class action under
- 3 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
- 4 and the proposed Class is easily ascertainable.
- 5 a. Commonality: Representative Plaintiff and the Class Members share a
- 6 community of interests in that there are numerous common questions and
- 7 issues of fact and law which predominate over any questions and issues solely
- 8 i. whether Paragon violated Labor Code §§ 201-204 by failing to pay all
- 9 wages due and owed at the time that Class Members' employment
- 10 ii. whether the Representative Plaintiff and Class Members are entitled
- 11 to "waiting time" penalties, pursuant to Labor Code §§ 203 and/or
- 12 iii. whether Paragon violated Labor Code § 226 by failing to provide
- 13 accurate semimonthly itemized wage statements to Class Members of
- 14 the total hours worked by each and all applicable hourly rates in effect
- 15 iv. whether Paragon violated Labor Code § 226.7 by failing to
- 16 consistently provide duty free rest periods to its employees;
- 17 v. whether Paragon violated Labor Code § 512 by failing to consistently
- 18 provide meal periods to its employees;
- 19 vi. whether Paragon violated Labor Code § 1174 by failing to keep
- 20 accurate records of employees' hours of work;
- 21 vii. whether Paragon violated Labor Code § 1197 by failing to
- 22 compensate the Representative Plaintiff and the Plaintiff Class for all
- 23 viii. whether Paragon violated Business and Professions Code §§ 17200,
- 24 *et seq.* by engaging in unfair, unlawful and/or fraudulent business
- 25 practices.
- 26 b. Typicality: The Representative Plaintiff's claims are typical of the claims of
- 27 the Plaintiff Class. Representative Plaintiff and all members of the Plaintiff
- 28 Class sustained damages arising out of and caused by Defendant's common
- course of conduct in violation of law, as alleged herein.
- c. Numerosity: A class action is the only available method for the fair and
- efficient adjudication of this controversy. The members of the Plaintiff Class
- are so numerous that joinder of all members is impractical, if not impossible,
- insofar as the Representative Plaintiff is informed and believes and, on that
- basis, alleges that the total number of Class Members is, at least, in the
- hundreds and, possibly, thousands of individuals. Membership in the Class

will be determined by and upon analysis of employee and payroll records, among other records maintained by Paragon.

d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel, experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Plaintiff Class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

25. Paragon has, for years, knowingly failed to properly compensate the Class Members for all unpaid wages due and owed to them. Paragon has failed to provide them with net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to provide uninterrupted, unrestricted meal periods of not less than thirty minutes for work shifts exceeding five hours.

26. Even upon termination or resignation of the employment of various Class Members, Paragon has declined to fully compensate these employees, in violation of Labor Code §§ 201-203. More than thirty days has passed since certain Class Members have left Defendant's employ.

27. Paragon also failed to provide Representative Plaintiff and the Class Members with accurate semimonthly itemized wage statements of the total number of hours worked by each and all applicable hourly rates in effect during each relevant pay period, in violation of California Labor Code § 226. In so doing, Paragon has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its

1 unlawful conduct by concealing the magnitude (e.g., the full number of hours worked) and financial
2 impact of its wrongdoing.

3 28. As a direct and proximate result of Paragon's unlawful conduct, as set forth herein,
4 Representative Plaintiff and the Class Members have sustained damages, as described above,
5 including loss of earnings for uncompensated meal and rest periods on behalf of Defendant, in an
6 amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
7 conduct, as set forth herein, Representative Plaintiff and other Class Members are entitled to recover
8 penalties/wages (pursuant to California Labor Code § 203), and Representative Plaintiff and the
9 Class Members are entitled to recover penalties for failure to provide accurate semimonthly
10 statements (pursuant to Labor Code § 226), in an amount to be established at trial. As a further direct
11 and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff
12 and the Class Members are also entitled to recover costs and attorneys' fees and restitution of ill-
13 gotten gains, pursuant to statute.

14
15 **FIRST CAUSE OF ACTION**
16 **FAILURE TO PROVIDE MEAL AND/OR REST PERIODS**
(California Labor Code §§ 226.7 and 512)

17 29. Representative Plaintiff incorporates in this cause of action each and every allegation
18 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

19 30. At all relevant times, Defendant was aware of and was under a duty to comply with
20 California Labor Code §§ 226.7 and 512.

21 31. California Labor Code § 226.7 provides:

22 (a) No employer shall require any employee to work during any
23 meal or rest period mandated by an applicable order of the Industrial
Welfare Commission.

24 (b) If an employer fails to provide an employee a meal period or
25 rest period in accordance with an applicable order of the Industrial
26 Welfare Commission, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of compensation
for each work day that the meal or rest period is not provided.

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32. California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

33. By failing to consistently provide uninterrupted and unrestricted meal periods and to provide uninterrupted rest periods to its non-exempt security personnel, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§ 11 and 12 of the applicable IWC Wage Order.

34. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained damages, including loss of compensation/wages, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Class Members are entitled to recover various penalties, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

35. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

36. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions; provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and

(7) the name and address of the legal entity which is the employer.

37. The IWC Wage Order also establishes this requirement in § 7(B) thereof (8 Cal. Code Regs. § 11010 *et seq.*).

38. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

39. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a central location in the state... payroll records showing the hours worked daily by and the wages paid to ... employees These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

40. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees under this section on behalf of himself and the Class Members.

41. Defendant failed to provide timely, accurate itemized wage statements to Representative Plaintiff and the Class Members in accordance with Labor Code § 226(a) and the applicable IWC Wage Order. None of the statements provided by Defendant has accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for Class Members.

42. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members are entitled to recover penalties, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

THIRD CAUSE OF ACTION
FAILURE TO PAY WAGES DUE
(California Labor Code §§ 203-204, 510 and 1198)

43. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

44. California Labor Code § 203 provides, in part:

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If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

45. California Labor Code § 204 provides, in part:

Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

46. California Labor Code § 510 provides, in part:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day or work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee....

47. California Labor Code § 1198 provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

48. Representative Plaintiff and the Class Members were employed by Defendant during the Class Period and did not receive all wages owed in the time dictated by Labor Code § 204. Moreover, certain class members voluntarily or involuntarily severed employment with Paragon, yet were not paid timely wages due immediately upon the involuntary termination or within seventy-two hours of the voluntary termination of their respective employment positions therewith. Said non-payment and/or untimely payment was the direct and proximate result of a willful refusal to do so by Defendant.

49. More than thirty days has elapsed since Representative Plaintiff and certain Class Members were terminated and/or resigned from the Defendant's employ.

50. As a direct and proximate result of Defendant's willful conduct in failing to pay said Class Members for all hours worked, Representative Plaintiff and certain Class Members are entitled

60. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Defendant has been unjustly enriched in an amount equaling or exceeding the amount of damages, penalties, interest, fees and costs payable to the Representative Plaintiff and the Plaintiff Class herein. Representative Plaintiff and the Plaintiff Class are entitled to restitution of all of Defendant's ill-gotten gains, according to proof, and to injunctive relief to halt Defendant's unfair, unlawful and/or fraudulent business practices.

d. That Defendant is found to have violated California Labor Code §§ 201, 203, 204 510

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1 and 1198 for willful failure to pay all compensation owed including that which is owed at the time
2 of termination or within 72 hours of resignation of employment to particular Class Members;

3 e. That Defendant is found to have violated the record keeping provisions of Labor Code
4 §§ 226(a) and 1174(d) and § 7 of the applicable Wage Order as to the Representative Plaintiff and
5 Class Members and for willful failure to provide accurate semimonthly itemized wage statements
6 thereto;

7 f. That Defendant is found to have violated California Labor Code § 1197 for failure
8 to pay the applicable minimum wage to the Class Members;

9 g. That Defendant is found to have violated Business & Professions Code § 17200, *et*
10 *seq.* by, *inter alia*, failing to pay the Representative Plaintiff and the Class Members all
11 compensation for meal and/or rest periods denied, and by failing to pay penalties to particular Class
12 Members;

13 h. That the Court make an award to the Representative Plaintiff and the Plaintiff Class
14 of damages in the amount of unpaid compensation, including interest thereon, and penalties, in an
15 amount to be proven at trial;

16 i. That Defendant be ordered and enjoined to pay restitution to the Representative
17 Plaintiff and the Class Members due to Defendant's unlawful activities, pursuant to Business &
18 Professions Code §§ 17200-08, *et seq.*;

19 j. That Defendant further be enjoined to cease and desist from unlawful activities in
20 violation of Business & Professions Code § 17200, *et seq.*;

21 k. For all other Orders, findings and determinations identified and sought in this
22 Complaint;

23 l. For interest on the amount of any and all economic losses, at the prevailing legal rate;

24 m. For reasonable attorneys' fees, pursuant to statute;

25 n. For costs of suit and any and all such other relief as the Court deems just and proper.

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1 Dated: September 28, 2009

2 SCOTT COLE & ASSOCIATES, APC

3
4 By:



5 Kevin R. Allen, Esq.
6 Attorneys for the Representative Plaintiff
7 and the Plaintiff Class
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin R. Allen, Esq. (S.B. #237994) SCOTT COLE & ASSOCIATES, APC 1970 Broadway, Ninth Floor Oakland, CA 94612 TELEPHONE NO.: (510) 891-9800 FAX NO.: (510) 891-7030 ATTORNEY FOR (Name): Representative Plaintiff Donald Schweinsburg, et al.		FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court SEP 28 2009 John A. Blalock, Executive Officer, Clerk By <u>ROBERTA SWAIN</u> JUDGE: BC 422721 DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse/Central District		
CASE NAME: Donald Schweinsburg v. Paragon Systems, Inc., dba Parasys, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PIPD/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input type="checkbox"/> Other PIPD/W (23) Non-PIPD/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIPD/W tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (36) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☒ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Four (4)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 28, 2009

Kevin R. Allen

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
Cal. Standards of Judicial Administration, s.d. 3.10
www.courtinfo.ca.govAmerican LegalNet, Inc.
www.FormsWorkflow.com

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller
Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (08)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review

Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SHORT TITLE

Donald Schweinsburg v. Paragon Systems, Inc.

CASE NUMBER

BC 422721

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 10-14 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

BY FAX

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 2, 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1, 2, 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A8070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7230 Product Liability (not asbestos or toxic/environmental)	1, 2, 3, 4, 6.
	Medical Malpractice (46)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 2, 4. 1, 2, 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 2, 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 2, 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1, 2, 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1, 2, 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A8029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3.
	Civil Rights (08)	<input type="checkbox"/> A8006 Civil Rights/Discrimination	1, 2, 3.
	Defamation (13)	<input type="checkbox"/> A8010 Defamation (slander/libel)	1, 2, 3.
	Fraud (16)	<input type="checkbox"/> A8013 Fraud (no contract)	1, 2, 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE: Donald Schweinsburg v. Paragon Systems, Inc.	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 8.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 8. 2., 8.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 8.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 8.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 8.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

SHORT TITLE: Donald Schweinsburg v. Paragon Systems, Inc.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 8. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: Donald Schweinsburg v. Paragon Systems, Inc.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: Address of Incident not Applicable; "Class Actions must be filed in the County Courthouse, Central District."	
<input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: n/a	STATE: n/a	ZIP CODE: n/a	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: September 28, 2009


(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/27/09

DEPT. 311

HONORABLE CARL J. WEST

JUDGE

E. SABALBURO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

8:30 am BC422721

Plaintiff

Counsel

DONALD SCHWEINSBURG

NO APPEARANCES

VS

Defendant

PARAGON SYSTEMS INC

Counsel

NON-COMPLEX (10-27-09)

NATURE OF PROCEEDINGS:

COURT ORDER

This Court makes its determination whether or not this case should be deemed complex pursuant to Rule 3.400 of the California Rules of Court.

→ This case is designated non-complex and is reassigned to Judge Michael C. Solner in Department 39 at Stanley Mosk Courthouse for all further proceedings.

Court orders any complex case fee paid to be refunded.

Plaintiff is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 39 within five (5) days of service.

Any party objecting to the non-complex designation must file an objection and proof of service in Department 311 within ten (10) days of service of this minute order. Any response to the objection must be filed in Department 311 within seven (7) days of service of the objection. This Court will make its ruling on the submitted pleadings.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/27/09

DEPT. 311

HONORABLE CARL J. WEST

JUDGE E. SABALBURO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

8:30 am

BC422721

Plaintiff

Counsel

DONALD SCHWEINSBURG

NO APPEARANCES

VS

Defendant

PARAGON SYSTEMS INC

Counsel

NON-COMPLEX (10-27-09)

NATURE OF PROCEEDINGS:

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 11-03-09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 11-03-09

John A. Clarke, Executive Officer/Clerk

By: _____

K. HILAIRE

SCOTT COLE & ASSOCIATES, APC
 Scott Edward Cole, Esq.
 1970 Broadway, Ninth Floor
 Oakland, California 94612

EXHIBIT C

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 05 2009

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

1 ELIZABETH STAGGS WILSON, Bar No. 183160
2 DOMINIC J. MESSIHA, Bar No. 204544
3 CORINN JACKSON, Bar No. 239275
4 LITTLER MENDELSON
5 A Professional Corporation
6 2049 Century Park East
7 5th Floor
8 Los Angeles, CA 90067.3107
9 Telephone: 310.553.0308
10 Fax No.: 310.553.5583

11 Attorneys for Defendant
12 PARAGON SYSTEMS, INC

13
14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16
17 COUNTY OF LOS ANGELES

18 DONALD SCHWEINSBURG,
19 individually, and on behalf of all others
20 similarly situated,

21
22 Plaintiffs,

23
24 v.

25 PARAGON SYSTEMS, INC., dba
26 PARASYS, INC., and DOES 1 through
27 100, inclusive,

28 Defendants.

Case No. BC422721

ASSIGNED FOR ALL PURPOSES TO
JUDGE CARL J. WEST

**DEFENDANT PARAGON SYSTEMS,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES**

Trial Date: None Set
Complaint Filed: September 28, 2009

Defendant Paragon Systems, Inc. ("Defendant" or "Paragon"), by and through its attorneys, hereby answers the unverified Complaint for Damages ("Complaint") of Donald Schweinsburg ("Plaintiff"), named Plaintiff herein, pursuant to section 431.30(b) of the California Code of Civil Procedure as follows:

Defendant denies each and every, all and singular, of the allegations contained in Plaintiff's Complaint, conjunctively and disjunctively, and further denies that Plaintiff has sustained any damages at all and further generally and specifically denies that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

Without waiving or excusing the burden of proof of the named Plaintiff and/or the putative class members or admitting that Defendant has any burden of proof, Defendant asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Failure To State Facts Sufficient To Constitute A Cause Of Action

1. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's Complaint and each purported cause of action therein, or some of them, fail to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

Federal Preemption

2. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's Complaint and each purported cause of action therein is preempted by some or all of the following: the Airline Deregulation Act of 1978 ("ADA") 49 U.S.C. § 41713(b)(1), the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") 49 U.S.C. § 41713, and federal enclave jurisdiction under Article I, Section 8, Clause 17 of the U.S. Constitution.

THIRD AFFIRMATIVE DEFENSE

Statute Of Limitations

3. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's claims are barred by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure sections 338, 340, 343, and California Business and Professions Code section 17208.

FOURTH AFFIRMATIVE DEFENSE

Waiver

4. Defendant is informed and believes and on that basis alleges that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's claims are barred by the equitable doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

Estoppel

5. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's claims are barred by the equitable doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

Laches

6. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's claims are barred by the equitable doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Unclean Hands

7. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's claims are barred by the equitable doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Consent

8. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action set forth therein are barred by the equitable doctrine of consent.

NINTH AFFIRMATIVE DEFENSE

Satisfaction

9. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that without admitting, and specifically denying, that Defendant owed any duty to Plaintiff and the putative class members, or some of them, any duty or obligation, contractual or otherwise, which Plaintiff and the putative class members claim is owed by Defendant, has been fully performed, satisfied and/or discharged.

TENTH AFFIRMATIVE DEFENSE

Good Faith

10. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff's Complaint and each purported causes of action therein, or some of them, are barred because, at all times, Defendant acted in good faith, did not engage in any unfair business practices, or otherwise violate any applicable laws.

ELEVENTH AFFIRMATIVE DEFENSE

On-Duty Meal Period Agreements

11. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff and/or the putative class members were not entitled to off-duty meal periods under California law because, at all times relevant, Plaintiff and all members of the putative class executed valid on-duty meal period agreements pursuant to the provisions of the Industrial Welfare Commission Wage Orders and the Labor Code.

TWELFTH AFFIRMATIVE DEFENSE

Outside Scope Of Employment

12. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff's Complaint and each purported cause of action therein, or some of them, cannot be maintained against Defendant because if Defendant's employees (including Plaintiff and/or the putative class members) took the actions alleged, such actions were committed outside the course and scope of such employees' employment, were not authorized, adopted or ratified by Defendant, and/or Defendant did not know of nor should they have known of such conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

After-Acquired Evidence

13. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that a reasonable opportunity for investigation and discovery may reveal and, on that basis, allege that evidence acquired subsequent to Plaintiff and the putative class members' filing of the Complaint bars and/or limits the amount of damages Plaintiff and the putative class members can recover on their claims, assuming *arguendo* they are able to establish Defendant's liability.

FOURTEENTH AFFIRMATIVE DEFENSE

Offset

14. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that the Complaint and each cause of action therein, or some of them, is barred in whole or in part against Defendant because the recovery by Plaintiff and/or the putative class members, if any, must be offset by any benefits and/or other monies they have received or will receive, including overpayments by Defendant, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

Standing

15. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that the Complaint and each cause of action set forth therein are

1 barred because Plaintiff lacks standing as a representative of the proposed class and as a
2 representative of the group of allegedly similarly situated individuals he seeks to represent, and do
3 not adequately represent the putative class members or other employees of Defendant.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 **Not Suitable For Class Treatment**

6 16. Defendant is informed and believes that further investigation and discovery will
7 reveal, and on that basis alleges that Plaintiff's claim and the putative class members and allegedly
8 similarly situated persons they seek to represent are misjoined, as their rights to recover require
9 individual analysis, do not present a predominance of common questions of law or fact, and are
10 unsuited for determination on a class or representative basis; class treatment is neither a superior nor
11 a suitable means of adjudicating these claims.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 **Violation Of Due Process**

14 17. Defendant is informed and believes that further investigation and discovery will
15 reveal, and on that basis alleges that the Complaint and each cause of action therein, or some of
16 them, are barred because the certification of a class, as applied to the facts and circumstances of this
17 case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in
18 violation of the Fourteenth Amendment of the United States Constitution and the Constitution and
19 laws of the State of California.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 **Release Of Claims**

22 18. Defendant is informed and believes that further investigation and discovery will
23 reveal, and on that basis alleges that the Complaint and each cause of action set forth therein are
24 barred by applicable settlement agreement(s) and/or other releases of claims executed by Plaintiff
25 and/or other putative class members.

NINETEENTH AFFIRMATIVE DEFENSE

No Private Right Of Action

19. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff's claims under California Labor Code section 200, *et seq.*, and sections 510, and 512 are barred, in whole or in part, because there is no private right of action under such sections.

TWENTIETH AFFIRMATIVE DEFENSE

Not Unlawful Under California Business And Professions Code § 17200

20. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff's Complaint and each purported causes of action therein, or some of them, are barred because Defendant's business practices were not, and are not, "unlawful" within the meaning of California Business and Professions Code section 17200, *et seq.*

TWENTY-FIRST AFFIRMATIVE DEFENSE

Not Unfair Under California Business And Professions Code § 17200

21. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff's Complaint and each purported causes of action therein, or some of them, are barred because Defendant's business practices were not, and are not, "unfair" within the meaning of California Business and Professions Code section 17200, *et seq.*

TWENTY-SECOND AFFIRMATIVE DEFENSE

Not Fraudulent Under California Business And Professions Code § 17200

22. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that Plaintiff's Complaint and each purported causes of action therein, or some of them, are barred because Defendant's business practices were not, and are not, "fraudulent" within the meaning of California Business and Professions Code section 17200, *et seq.*

TWENTY-THIRD AFFIRMATIVE DEFENSE

Violation Of Due Process

23. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges that the California Business and Professions Code section 17200 *et*

1 *seq.* is unconstitutionally vague and overbroad and the manner in which Plaintiff and the putative
2 class members claim that said statutes apply to Defendant's business practices and thus constitutes a
3 violation of Defendant's right to due process.

4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 **Violation Of Due Process**

6 24. Defendant is informed and believes that further investigation and discovery will
7 reveal, and on that basis alleges that prosecution of this action by Plaintiff and the putative class
8 members under Business and Professions Code section 17200 *et seq.*, as applied to the facts and
9 circumstances of this case, would constitute a denial Defendant's substantive and procedural due
10 process rights under the Fourteenth Amendment of the United States Constitution and under the
11 Constitution and laws of the State of California.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 **Failure To Mitigate**

14 25. Defendant is informed and believes that further investigation and discovery will
15 reveal, and on that basis alleges that Plaintiff's Complaint and each purported cause of action
16 therein, or some of them, are barred because Plaintiff and the putative class members, or some of
17 them, have failed to take reasonable steps to mitigate their damages, if any.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 **Adequate Remedy At Law**

20 26. Defendant is informed and believes that further investigation and discovery will
21 reveal, and on that basis alleges that Plaintiff's Complaint and each cause of action therein, or some
22 of them, are barred because, to the extent that Plaintiff and the putative class members, or some of
23 them, seek to recover equitable relief, Plaintiff and the putative class members are not entitled to
24 such relief because they have an adequate remedy at law.

25 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

26 **Bona Fide Dispute**

27 27. Defendant is informed and believes that further investigation and discovery will
28 reveal, and on that basis alleges that Plaintiff's Complaint and each cause of action therein, or some

1 of them, are barred because there exists a *bona fide* dispute as to whether further compensation is
2 actually due to Plaintiff and the putative class members and, if so, as to the amount of such further
3 compensation.

4 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

5 **Good Faith Dispute**

6 28. Defendant is informed and believes that further investigation and discovery will
7 reveal, and on that basis alleges that Plaintiff's Complaint and each cause of action therein, or some
8 of them, are barred because there exists a *good faith* dispute as to whether further compensation is
9 due to Plaintiff and the putative class members and Defendant can present a defense which will
10 preclude any recovery on the part of Plaintiff or the putative class members.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 **Not Willful Or Intentional**

13 29. Defendant is informed and believes that further investigation and discovery will
14 reveal, and on that basis alleges that to the extent that Plaintiff and the putative class members seek
15 to recover waiting time and other statutory penalties, Plaintiff and the putative class members have
16 failed to state a claim for such penalties because even assuming, *arguendo*, that Plaintiff and the
17 putative class members are entitled to additional compensation, Defendant has not willfully or
18 intentionally failed to pay any such additional compensation to Plaintiff and the putative class
19 members and they never made a demand for such additional compensation.

20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 **Additional Affirmative Defenses**


22 30. Defendant is informed and believes that further investigation and discovery will
23 reveal, and on that basis alleges that it does not presently know all facts respecting the conduct of
24 Plaintiffs and the putative class members sufficient to state all affirmative defenses at this time.
25 Defendant reserves the right to amend this Answer should it later discovery facts demonstrating the
26 existence of additional affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff and the putative class members take nothing and that the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Defendant's favor;
3. That Defendant be awarded its attorneys' fees and costs of suit herein; and
4. That Defendant be awarded such other, further relief as the Court deems just and proper.

Dated: November 4, 2009


ELIZABETH STAGGS WILSON
DOMINIC J. MESSIHA
CORINN JACKSON
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
PARAGON SYSTEMS, INC

Firmwide:92662920.2 050542.1012

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2049 Century Park East, 5th Floor, Los Angeles, California 90067.3107. On November 4, 2009, I served the within document(s):

DEFENDANT PARAGON SYSTEMS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 310.553.5583. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Scott Edward Cole, Esq.
Kevin R. Allen, Esq.
Scott Cole & Associates, APC
1970 Broadway, Ninth Floor
Oakland, CA 94612
Phone: (510) 891-9800 - Fax: (510) 891-7030
Attorneys for Plaintiff and Plaintiff Class

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 4, 2009, at Los Angeles, California.


Colleen Reid-Rose

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Donald Schweinsburg		DEFENDANTS Paragon Systems, Inc.																			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Scott E. Cole (Bar No. 160744) Kevin R. Allen (Bar No. 237944) Scott Cole & Associates APC 1970 Broadway Ninth Floor Oakland, CA 94612 (510) 891-9800 (telephone)		Attorneys (If Known) Elizabeth Staggs Wilson (Bar No. 183160) Dominic J. Messiha (Bar No. 204544) Littler Mendelson PC, 2049 Century Park East Fifth Floor Los Angeles, CA 90067 (310) 553-0308 (telephone)																			
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:40%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:30%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4																
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																
IV. ORIGIN (Place an X in one box only.) <input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																					
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ _____																					
VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 U.S.C. §§ 1332, 1441																					
VII. NATURE OF SUIT (Place an X in one box only.)																					
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability BANKRUPTCY <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609																

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Virginia and Georgia

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date **November 5, 2009**

Elizabeth Staggs Wilson

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Philip S. Gutierrez and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV09- 8139 PSG (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.